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Trade Unions - Constitution and By-Laws - Right to Strike

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It is evident that the validity of a school regulation is dependent on the determination of two factors: First, is it reasonable when applied to the group as a whole? Second, is it reasonable when applied to a particular individual? A negative response to the first inquiry renders the regulatory action totally void, whereas a similar response to the second results only in a partial limitation of the regulation's effective scope. As no special circumstances were alleged by the plaintiff, the decision in the instant case is clearly correct.

Kenneth R. Erie

TRADE UNIONS — CONSTITUTIONS AND BY-LAWS — RIGHT TO STRIKE — In an action brought by a local labor union against an employer, the union contended that the employer coerced members and prospective members to leave the local union and join an association which it alleged was not a bona fide labor union by virtue of its inability to strike. A separate action brought by the employer to enjoin picketing of his business establishment by the local union was consolidated for trial. The court *held* that the injunction be issued. The power to strike is not an indispensable attribute of a bona fide labor union. *Culinary Alliance and Hotel Service Employees Local Union* 402 v. *J. R. Beasley*, 286 P. 2d 844 (Cal. 1955).

A labor union is an association of workers organized for mutual help and cooperation, which exists for the purpose of bargaining on behalf of workers with respect to the terms or conditions of employment.[1] All rights, privileges and duties of an unincorporated union and its members and all express or implied powers must be found in the constitution, charter, or by-laws.[2] The constitution denotes the contract between member and union and also the contract between members and other members.[3] When one signs as a member he is bound by the union's laws unless they involve a surrender of personal or constitutional rights or contravene public policy.[4] The constitution may, for example, impose fines for tardiness, absence, failure to pay dues, or misconduct affecting the organization or its members,[5] and these penalties will be enforced where only the rights of the union and its members are involved.[6] Legal sanction has been given to rules made in good faith prohibiting union men from working with non-union men,[7] preventing union members from working for one who has broken a union contract,[8] and forbidding union members to

1. Restatement, Torts, §778 (1939).
2. Amalgamated Clothing Workers v. Kisen, 174 Va. 229, 6 S.E.2d 562 (1940).
3. Government and Civic Employees Organizing Committee v. Windsor, 262 Ala. 285, 78 So.2d 646 (1955); Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 18 So. 810, 823 (1944) (dictum).
4. Bires v. Barney, 277 P.2d 751 (Ore. 1954); Allen v. Southern Pacific Co., 166 Ore. 290, 110 P.2d 933 (1941).
5. Willcutt and Sons Co. v. Bricklayers' Benevolent & Protective Union, 200 Mass. 110, 85 N.E. 897, 901 (1903) (dictum); United Brotherhood v. Carpenters Local Union 14, 178 S.W.2d 558, 567 (Tex. 1944) (dictum).
6. Martin, The Modern Law of Labor Unions, §150, at 206, 207 (1910).
7. Reinforce, Inc. v. Birney, 308 N.Y. 164, 124 N.E.2d 104, 106 (1954) (dictum). "But if the acts of unions have any reasonable connection with wages, hours of employment, health, safety, the right of collective bargaining, or any other condition of employment or for the protection from labor abuses, then the acts are justified".
8. Kingston Trap Rock Co. v. International Union, 129 N.J. 570, 19 A.2d 661, 665 (1941) (dictum).

work with materials supplied by an employer who hired non-union men.[9] If the member has voluntarily joined the union, it is lawful to enforce the constitutional provisions by any means not involving intimidation or threat.[10]

The California Labor Code prohibits interference or domination by the employer with respect to the formation or administration of any labor organization.[11] Therefore, evidence of such activity will generally be fatal to an association's claim that it is a bona fide labor union.[12]

While it may be argued that an association's by-law expressly prohibiting the right to strike is at least prima facie indicative of some domination or control by the employer, the existence of such a by-law should not be conclusively determinative.

The right to strike is probably a union's most effective bargaining tool, and is almost invariably a right granted by its constitution. However where as in the instant case, the complete lack of employer interference or domination is proved, the mere inability to enforce demands by striking, should not be a particularily persuasive element to be considered in ascertaining an association's status. Certainly the law should not demand that the members of an association be forced, as a pre-requisite to legal recognition as a union, to insert in its constitution or by-laws powers which it finds undesirable or unnecessary.

An employer may seek equitable enforcement of his contractual rights against a union.[13] The union has reciprocal rights.[14] A strike, although a lawful and valuable economic weapon, is not a substitute for orderly procedure in court.[15] It is commendable that a union, having made a contract and feeling aggreived because of an alleged violation by the employer should go to equity for relief,[16] thus obviating the large financial loss, needless friction, and breaches of the peace not infrequently incident to the use of the strike as a means of redressing wrongs.

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9. Schweizer v. Waiters & Bartenders Union, 121 Cal. 45, 262 P.2d 568, 572 (1953).
10. Kingston Trap Rock Co. v. International Union of Operating Engineers, 19 A.2d 661, 666 (N.J. 1941) (dictum); Hagen v. Culinary Workers Alliance Local, 70 Wyo. 165, 246 P.2d 778, 788 (1952) (dictum).
11. Labor Code, §1117 (Cal. 1955).
12. See, *e.g.*, McKay v. Retail Automobile Salesmen, 16 Cal.2d 311, 106 P.2d 373 (1940) (Members of alleged union made up only a portion of all employees; there was no affiliation with external labor organization, and no by-laws or rules. Inference that no bona fide labor organization existed).
13. Hotel & Restaurant Employees Union v. Tzakis, 33 N.W.2d 859 (Minn. 1948).
14. See, *e.g.*, Montaldo v. Hires Bottling Co., 59 Cal.2d 643, 139 P.2d 666, 669 (1943); Ribner v. Rasco Butter and Egg Co., 135 Misc. 616, 238 N.Y.S. 132 (1929) (Equity will generally compel employer to perform a contract with union by discharging men who have ceased to be affiliated with union and by refraining from hiring non-union men. The remedy at law is considered inadequate because of the irreparable and continuous nature of the injury).
15. Birmingham Trust and Savings Co. v. Atlanta B. & A. Ry. Co., 271 Fed. 743, 746 (5th Cir., 1921) (dictum).
16. Montaldo v. Hires Bottling Co., 59 Cal.2d 643, 139 P.2d 666, 669 (1943) (dictum).